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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,315	07/09/2001	Q. Peter Zhang	17656 USA	7760

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EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,315

Applicant(s)

ZHANG ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-9, 11-16, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 4-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-16, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 11-16, and 20-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure fails to describe the gripping panels extend parallel to one another and having uniform in width along an axial portion of the gripping feature. This is a new matter rejection. It is noted that none of the drawings of Figs. 9-16 would suggest the specificity of the two gripping panels being extending parallel to one another.

Claim Rejections - 35 USC § 103

3. Claims 11-12, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes (D308, 167) in view of Krishnakumar (5472105) and further in view of Slat et al. Holmes teaches a container having a body portion with a circular cross section, a neck portion, and a pair of gripping panels at the neck portion. Holmes meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Holmes as taught

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by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

With respect to the gripping panels extending parallel to one another, it would have been obvious to one of ordinary skill in the art to have the two gripping panels extending parallel to one another to enable one to grasp the container easily.

Regarding claim 12, Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

4. Claims 11, 12, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Gatten (4671412) in view of Krishnakumar '105, and further in view of Slat et al. Holmes teaches a container having a body portion with a circular cross section, a neck portion, and a pair of gripping panels at the neck portion. Gatten meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Gatten as taught by

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Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

With respect to the gripping panels extending parallel to one another, figure 2 show the wall at 43 being parallel.

Regarding claim 13, the note the concaved portions 43.

Regarding claims 15-16, it would have been obvious to one of ordinary skill in the art to provide the dimensions as set forth in claims 15 and 16 to provide the desired proportion of the container, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241)

5. Claims 11, 12, 13-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Leary et al. (D250392) in view of Krishnakumar '105, and further in view of Slat et al. Leary teaches a container with a container having a body portion with a circular cross section, a neck portion, and a pair of gripping panels at the neck portion. Leary meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of

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ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Leary as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the gripping panels extending parallel to one another, it would have been obvious to one of ordinary skill in the art to have the two gripping panels extending parallel to one another to enable one to grasp the container easily.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

Regarding claims 15-16, it would have been obvious to one of ordinary skill in the art to provide the dimensions as set forth in claims 15 and 16 to provide the desired proportion of the container, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see *In re Rose*, 105 USPQ 237 (CCPA 1955), and *In re Tanczyn*, 44 CCPA 704, 766, 241)

Regarding claim 20, note the non-circular cross-section in Fig. 6 and the two widths as set forth in the claim.

6. Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the rejections of anyone of Holmes, Gatten, and Leary, as set forth above, and further in view of Krishnakumar (5279433). It would have been obvious to one of ordinary skill in the art to provide the a

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plurality of inwardly projection panels in Gatten as taught by Krishnakumar (Figs. 1-8) to enable one to hot fill products easily.

Response to Arguments

7. Applicant's arguments filed 07/15/03 have been fully considered but they are not persuasive. With respect to the rejection of Holmes and Leary combinations, the amended claims do not read over the Holmes or Leary combinations as set forth above. It is noted that Fig. 1 in Holmes teaches the grip being substantially parallel to one another. Furthermore, it would have been obvious to one of ordinary skill in the art to make the two grip portions being parallel to enhance the grip, i.e., one would not desire to provide slanted walls on the grip portions because it would slip easily. Thus, having two parallel grip portions is often preferred as evidenced in the many cited references. With respect to the distance between the gripping panels, the claim recites "no more than 2 ½ inches" is broad since many bottle have the opening substantially less than 2 ½ inches, and Fig. 1 in Holmes shows that the two grips portions are about the same as the diameter of the opening.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai
Primary Examiner
Art Unit 3727

